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By the Commission



ATTEST:


Executive Director

ATTACHMENT

ATTACHMENT TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00248 DATED AUG 30 2021

EIGHT PAGES TO FOLLOW

**BEFORE THE PUBLIC SERVICE COMMISSION
COMMONWEALTH OF KENTUCKY**

**LOGAN TELEPHONE
COOPERATIVE, INC.,**

Complainant,

v.

**EAST LOGAN WATER
DISTRICT, INC.**

Defendant.

Case No. 2021-00248

FORMAL COMPLAINT

Complainant Logan Telephone Cooperative, Inc. (“LTC”), by counsel, for its formal complaint against defendant East Logan Water District, Inc. (“East Logan”), states as follows.

PARTIES

1. LTC’s full name and address is: Logan Telephone Cooperative, Inc., 10725 Bowling Green Road Auburn, Logan County, Kentucky 42206. LTC is a cooperative formed under KRS Chapter 279. LTC provides telecommunications and broadband services in the counties of Butler, Logan, Muhlenberg, Ohio, Simpson, Todd, and Warren.

2. East Logan’s full name and address is: East Logan Water District, Inc., 333 S. Franklin St. Russellville, Kentucky. East Logan is a water district providing service in Logan County.

3. LTC is a ratepayer and customer of East Logan.

JURISDICTION

4. The Public Service Commission (the “Commission”) has original jurisdiction to regulate the “rates and service of utilities” within the Commonwealth. KRS 278.040(2). With only limited exceptions, water districts are public utilities that are subject to the Commission’s jurisdiction. KRS 278.015. East Logan specifically is subject to the Commission’s jurisdiction. *See e.g.*, Case No. 2020-00220, *Electronic Purchased Water Adjustment Filing of East Logan Water District, Inc.* (Ky. PSC Jul. 30, 2020).

5. The Commission maintains original jurisdiction over, and authority to investigate, complaints that the “service of any utility . . . is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained.” KRS 278.260(1).

6. This matter involves East Logan’s unreasonable, unsafe, and insufficient practice of repeatedly refusing to locate and mark its water lines for LTC and its contractors, which has not only directly resulted in East Logan’s inability to furnish adequate, efficient, and reasonable service to LTC as an East Logan customer, but has also interfered with LTC’s ability to deploy new fiber broadband services to its own members.

STATEMENT OF FACTS

7. East Logan operates underground water lines in Logan County. Those lines are used for conveying, transmitting, and distributing water.

8. LTC is a customer of East Logan. Many of LTC’s members are likewise customers of East Logan.

9. Since 2013, LTC has been replacing its copper (DSL) network with a state-of-the-art fiber to the home (“FTTH”) fiber optic network.

10. LTC’s construction and deployment of FTTH service involves the excavation and installation of fiber-optic cables and related facilities underground. In addition to its own workforce, LTC employs contractors to assist with this deployment.

11. In 2019 and 2020, LTC and its contractors performed a variety of excavations and installations in Logan County. That work is continuing in 2021.

12. In compliance with Kentucky’s Underground Facility Damage Prevention Act of 1994 (the “Act”), LTC and its contractors have submitted locate requests to East Logan regarding excavations/installations planned in the East Logan territory.

13. East Logan routinely fails to appropriately respond to locate requests from LTC’s contractors.

14. Indeed, on several occasions, East Logan has not responded at all.

15. On those occasions when East Logan has responded, its responses have been inconsistent with its legal obligations, including failing to physically mark its water lines or notify whether the location(s) of its lines conflict with the location(s) of LTC’s planned excavation. *See* KRS 367.4909(6).

16. For example, in the fall of 2020, after four locate requests, East Logan informed an LTC contractor that East Logan cannot locate its lines with accuracy and that the contractor will need to come to East Logan’s office to review East Logan’s maps. (*See* Email Correspondence, attached as Exhibit 1.) Despite the fact that East Logan is obligated to do more than demand that LTC’s contractor come review East Logan’s maps, it stands to reason that either: (i) East Logan is able to use its own maps to perform the statutorily required locate; or (ii) those maps are

inaccurate, and it cannot be reasonably expected that a contractor's review of them would be helpful.

17. On other occasions, East Logan has improperly attempted to advise by telephone regarding the location of its lines.

18. East Logan personnel have communicated to at least one LTC contractor that East Logan has instructed them not to mark the water lines because it costs too much.

19. East Logan's refusal to mark and locate its water lines has resulted in the accidental breakage of its water lines during the course of LTC's FTTH deployment.

20. On one particularly notable occasion (on October 25, 2019), East Logan failed to respond to the locate request, and an LTC contractor accidentally hit one of East Logan's water lines, resulting in the line breaking. Following this incident, one of East Logan's Water Commissioners, Carroll Browning, threatened physical harm against LTC's contractor and, shortly thereafter, entered LTC's principal office to threaten LTC employees. Commissioner Browning was thereafter criminally charged with disorderly conduct and terroristic threatening. Commissioner Browning posted bond, and the case is still pending. *See Commonwealth of Kentucky v. Carroll Browning*, Case No. 19-M-612 (Logan Cty. D. Ct.).

21. LTC has attempted on numerous occasions to confer with East Logan to secure East Logan's compliance with the Act through accurate and timely marking of East Logan's facilities. East Logan continues to insist that the Act does not require it to accurately locate or physically mark its lines.

22. Regardless of whether East Logan's practices violate the Act (and LTC believes that they do), East Logan's practices are completely unreasonable for a regulated water district, especially one with such already high unaccounted for water loss.

23. East Logan's ongoing refusal to locate and mark its water lines has resulted in otherwise avoidable line breakages and directly caused excessive water loss, service outages, and boil water advisories that have detrimentally impacted LTC and its members.

24. Moreover, East Logan's ongoing intransigence on this issue continues to unreasonably impede LTC's deployment of FTTH facilities in rural Kentucky.

25. The Commission is currently investigating East Logan's "almost 50 percent increase in unaccounted-for water loss since 2015." Case No. 2020-00220, *Electronic Purchased Water Adjustment Filing of East Logan Water District, Inc.* (Ky. PSC Jul. 30, 2020), Order at 5.

26. As noted in that proceeding, East Logan's unaccounted-for water loss in 2019 was 29.4662 percent, which is nearly double the 15 percent allowed under 807 KAR 5:066(6)(3). *Id.* at 1-2.

27. In that same proceeding, the Commission noted that "[r]eduction of East Logan District's unaccounted-for water loss to 15 percent would result in an approximate \$137,406.60 decrease to the purchased water expense." *Id.* at 2.

28. East Logan has previously been the subject of at least one recent formal complaint alleging that water line breakages were resulting in the provision of unreasonable service. *See* Case No. 2019-00295, *Randal Nielsen v. East Logan Water District, Inc.* (Ky. PSC Jan. 6, 2020) (customer filed a formal complaint regarding low-water pressure and interruption in water service that the customer believed to be caused by a break in a water line).

29. East Logan has acknowledged in its corporate minutes that it is unable to accurately locate its water lines. *See* Case No. 2021-00063, *Electronic Investigation into East Logan Water District, Inc. Water Loss*, Response to PSC Initial Data Request No. 11 (Minutes of August 25, 2020 Meeting, relevant excerpt attached hereto as Exhibit 1). These minutes further indicate that,

as a consequence of its inability to accurately locate its water lines, East Logan and the members of its Board have strategically decided to refrain from attempting to locate its water lines for LTC's contractors in a bid to escape liability for any breaks that may occur in connection with excavation activity near unidentified or misidentified lines. *Id.* East Logan's strategic decision to abandon locate efforts in an attempt to foist liability for accidental line breakage onto LTC and its contractors is unreasonable and unlawful.

30. LTC acknowledges that KRS 367.4917(6) circumscribes limits on the Commission's power to assess civil penalties arising from an operator's failure to mark its water lines. However, LTC does not seek civil penalties from East Logan at this time.

31. As a regulated utility, East Logan should be obligated to perform timely and accurate facility locates consistent with the provisions of the Act and adequate to help prevent accidental water line damage by other utility contractors operating in the area.

32. East Logan's failure or refusal to do so is patently unreasonable, and the Commission of course has jurisdiction under KRS Chapter 278 to ensure that East Logan's practices comport with its statutory obligations to provide reasonable service. *See* KRS 278.030(1)-(2); *see also* 278.260(1) ("The commission shall have original jurisdiction over complaints ... that any ... practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained....").

VIOLATION OF KRS 278.030 AND 278.260

33. LTC restates, reiterates, and adopts all of the allegations contained in each paragraph above.

34. Pursuant to KRS 278.030(2), East Logan must “furnish adequate, efficient and reasonable service.” Additionally, East Logan’s rates for its service must be “fair, just, and reasonable.” KRS 278.030(1).

35. The Commission is expressly authorized to investigate East Logan’s practices or acts that are “unreasonable, unsafe, insufficient or unjustly discriminatory . . .” KRS 278.260(1).

36. East Logan has unreasonably refused to locate and mark its water lines for LTC and its contractors.

37. East Logan’s unreasonable refusal to locate and mark its water lines for LTC and its contractors also violates the Act. *See* KRS 367.4909(5)-(6).

38. As a consequence of its unreasonable refusal to timely and properly locate its facilities, East Logan has suffered several water line breaks in 2019 and 2020. Those water line breaks have adversely and unreasonably affected East Logan’s service reliability and cost of service to its customer LTC, as well as those LTC members who are also East Logan customers.

39. In addition to the water service problems that East Logan has created, its refusal to timely and appropriately mark the location of its facilities has simultaneously impeded LTC’s efforts to deploy FTTH within its service territory.

WHEREFORE, LTC respectfully requests that the Commission:

- A. Order East Logan to adopt practices and training procedures that are adequate and appropriate to ensure that its management and employees understand and comply fully with Kentucky’s Underground Facility Damage Prevention Act of 1994 regarding the timely and accurate marking and locating of its water facilities;

- B. Order East Logan to adopt other practices and training procedures that are adequate and appropriate to ensure that East Logan's water line breakages and unaccounted-for water loss are reasonably minimized; and
- C. Grant LTC any and all other legal and equitable relief to which it is or may be entitled.

Respectfully submitted,

/s/ Edward T. Depp

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